

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SANDRA LYNN COYLE, )  
Plaintiff, )  
-vs- )  
REBECCA M. BAKER (RETIRED JUDGE) )  
STEVENS COUNTY SUPERIOR COURT, )  
ALLEN C. NIELSON, and CHRIS A. )  
MONTGOMERY, )  
Defendants. )  
)  
NO. CV-12-0601-LRS  
**ORDER DENYING MOTION FOR  
RECUSAL AND GRANTING  
DISMISSAL OF CLAIMS AGAINST  
DEFENDANTS BAKER AND  
NIELSON**

BEFORE THE COURT, at the scheduled oral argument on February 5, 2013, in Spokane, Washington, are the following motions: Defendants' Rebecca M. Baker, County of Stevens, and Allen C. Nielson ("Defendants") Motion For Dismissal For Failure To State A Claim FRCP 12(b) (6), ECF No. 16; Plaintiff Coyle's Motion And Memorandum To Take Judicial Notice Of Facts, ECF No. 23; Plaintiff Coyle's Motion To Strike Defendants' Motion To Dismiss, ECF No. 26; Plaintiff Coyle's Motion For Recusal, ECF No. 32; Plaintiff Coyle's Motion to Strike Defendants' Reply Memorandum, ECF No. 37; and Plaintiff's oral motion for leave to amend her second amended Complaint.

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ORDER - 1

1       **1. Plaintiff's Motion For Recusal (ECF No. 32)**

2       Plaintiff asks the undersigned judge to recuse himself under 28  
3 U.S.C. § 144. Among other things, Plaintiff asserts that the undersigned  
4 judicial officer has bias or prejudice stemming from an extrajudicial  
5 source. Plaintiff appears to be arguing that the court's recognition of  
6 Defendant Nielson's right (of counsel) to be heard in support of the  
7 motion to dismiss somehow allows her to conclude the court is biased and  
8 without authority to act. Plaintiff concludes that, to date, she has not  
9 been able to ascertain that the undersigned judge has a lawfully valid,  
10 timely filed, Oath of Office pursuant to 28 U.S.C. § 453. Additionally,  
11 Plaintiff argues that the undersigned judicial officer "has demonstrated  
12 clear and blatant bias in favor of the Defendants, in violation of  
13 Plaintiff's Rights as enumerated within the Bill of Rights of the U.S  
14 Constitution, in particular the 5<sup>th</sup> Amendment." ECF No. 32. However,  
15 she sets forth no facts which can reasonably support her claim.  
16 Moreover, it is not clear what bias Plaintiff is referring to, as the  
17 Court has ruled in Plaintiff's favor on at least two (2) of her motions  
18 prior to this hearing. (ECF Nos. 30, 40).

19       The Judiciary Act of 1789 provides two statutory methods for the  
20 removal of judges presiding over actions. *Murray v. International*  
21 *Revenue Serv.*, 923 F. Supp. 289, 292 (D. Idaho 1986). These methods  
22 include 28 U.S.C. § 144 and 28 U.S.C. § 455. The statute raised by  
23 Plaintiff in her motion for recusal, 28 U.S.C. § 144 reads:

24               Whenever a party to any proceeding in a district  
25 court makes and files a timely and sufficient

1 affidavit that the judge before whom the matter is  
2 pending has a personal bias or prejudice either  
3 against him or in favor of any adverse party, such  
judge shall proceed no further therein, but another  
judge shall be assigned to hear such proceeding.

4 The affidavit shall state the facts and the reasons for the belief  
5 that bias or prejudice exists, and shall be filed not less than ten days  
6 before the beginning of the term at which the proceeding is to be heard,  
7 or good cause shall be shown for failure to file it within such time.  
8 A party may file only one such affidavit in any case. It shall be  
9 accompanied by a certificate of counsel of record stating that it is made  
10 in good faith.  
11

12 The Plaintiff's motion for recusal is without merit. A judge has  
13 a duty to disqualify himself in any proceeding in which his impartiality  
14 might reasonably be questioned. 28 U.S.C. § 455(a). He shall also  
15 disqualify himself "where he has a personal bias or prejudice concerning  
16 a party, or personal knowledge of disputed evidentiary facts concerning  
17 the proceeding." 28 U.S.C. § 455(b) 1.

18 The applicable test for recusal under the statute requires the judge  
19 to evaluate the sufficiency of the affidavit to determine if there is  
20 "bias in fact." *Murray*, 923 F. Supp. at 1292 (citing to *Berger v. United*  
21 *States*, 255 U.S. 22 (1921)). The law is well settled that a prior  
22 unfavorable ruling does not establish "bias in fact." *Id.* at 1292.  
23

24 The standard for recusal is whether a reasonable person with  
25 knowledge of all the facts would conclude the judge's impartiality might  
26 reasonably be questioned. *Taylor v. Regents of the University of*

1     *California*, 993 F.2d 710, 712 (9th Cir. 1993) (citing *United States v.*  
 2     *Studley*, 783 F.2d 934, 939 (9th Cir. 1986)). To be sufficient, the  
 3     affidavit must constitute a firm showing that the judge has a personal  
 4     bias or prejudice to a party. *In re Martinez-Catala*, 129 F.3d 213, 218  
 5     (1st Cir. 1997).

6           Where, as is true in this case, there is no statutory basis for  
 7     recusal, a judge has a "duty to sit" pursuant to the rules governing the  
 8     assignment of cases among judges. Plaintiff's Motion for Recusal is  
 9     respectfully denied.

10           **2. Defendants' Motion For Dismissal (ECF No. 16)**

11           Defendants move to dismiss Plaintiff's claims with prejudice, based  
 12     on the judicial immunity doctrine. Defendants argue that judges, acting  
 13     as a judicial officer, have absolute immunity from suit. Judges are  
 14     immune from having to defend themselves in this type of an action.  
 15     Absolute and qualified immunity are "an entitlement not to stand trial  
 16     or face the other burdens of litigation." *Mitchell v. Forsyth*, 472 U.S.  
 17     511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985). The privilege,  
 18     Defendants argue, is an immunity from suit rather than a mere defense to  
 19     liability. Further, this Plaintiff's pleadings do not meet the threshold  
 20     requirements of *Iqbal*<sup>1</sup> and *Twombly*<sup>2</sup> and Plaintiff's arguments are  
 21     unsupported and nonsensical.

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 25     <sup>1</sup>*Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009).

26     <sup>2</sup>*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167  
 L. Ed. 2d 929 (2007).

1 Plaintiff responds that "[w]hen the court has not (sic)  
2 jurisdiction, the whole proceeding is before a person who is not a judge  
3 . . ." (ECF Doc. 28 at 3). Plaintiff does not cite any case law to  
4 support this argument. Plaintiff, however, does not specify the precise  
5 jurisdictional arguments that she made in the referenced state court  
6 action. Further, Plaintiff does not allege nor does she cite facts that  
7 would raise an issue of the state court's "complete absence of  
8 jurisdiction."

9 The court finds that as long as the named defendant judges are  
10 acting in a judicial function, they are entitled to immunity. The  
11 Plaintiff does not allege that the judges were acting in any capacity  
12 other than a judicial one. It may be that Plaintiff did not agree with  
13 the rulings of the state court, but dissatisfaction does not constitute  
14 a cause of action. Under *Twombly*, "[a] plaintiff's obligation to provide  
15 the grounds of his entitle[ment] to relief requires more than labels and  
16 conclusions, and a formulaic recitation of the elements of a cause of  
17 action will not do." *Twombly*, 550 U.S. at 555, 127 S. Ct. 1955.

19 The court cannot grant relief to the Plaintiff in this case because  
20 the judges are entitled to absolute immunity from suit. Moreover,  
21 Plaintiff is unable either in oral argument or in the pleadings (and  
22 amendments) to reference any facts or theory of liability which can be  
23 alleged to overcome the claim of judicial immunity which applies to  
24 Defendants Baker and Nielson. The Plaintiff's claims for damages and  
25 other relief against the judges are based solely on the judges' actions

1 as judicial officers within the confines of a lawsuit brought against the  
2 Plaintiff in state court over a property dispute. While Plaintiff has  
3 the right to disagree with the rulings, and criticize the rulings, she  
4 does not have the right to sue the judges over the rulings. Otherwise,  
5 to give a citizen the power to bring a civil suit against any judge  
6 because the citizen disagrees with the judge's ruling would threaten our  
7 basic system of justice. Defendants Baker and Nielson's request for  
8 dismissal of Plaintiff's claims with prejudice is granted.  
9

10       **3. Plaintiff Coyle's Motion and Memorandum to Take Judicial Notice  
of Facts, ECF No. 23**

11       Plaintiff requests this Court take "mandatory" judicial notice of  
12 the following items Plaintiff refers to as facts: "In the Superior Court  
13 of the State of Washington, In and for the County of Stevens, *Butler v.*  
14 *Coyle*, case No. 2008-2-00341-6, jurisdiction was neither properly nor  
15 lawfully invoked on the record, thereby rendering all judgments and  
16 orders therein null and void." ECF No. 23 at 1-m.  
17

18       Although, as a general rule, a district court may not consider  
19 materials not originally included in the pleadings in deciding a Rule 12  
20 motion, Fed.R.Civ.P. 12(d), it "may take judicial notice of matters of  
21 public record" and consider them without converting a Rule 12 motion into  
22 one for summary judgment. *Lee v. City of Los Angeles*, 250 F.3d 668, 688  
23 (9<sup>th</sup> Cir. 2001) (internal quotation marks and citation omitted). Judicial  
24 notice is appropriate for records and "reports of administrative bodies."  
25 *Interstate Natural Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9<sup>th</sup>  
26 Cir. 1954). It is not appropriate, however, to take judicial notice that

1 jurisdiction was "not invoked on the record" as Ms. Coyle argues, or that  
2 "all judgements and orders are therein null and void." Therefore, the  
3 Court respectfully denies Plaintiff's Motion to Take Judicial Notice of  
4 Facts.

5 **4. Plaintiff Coyle's Motion to Strike Defendants' Motion to  
6 Dismiss (ECF No. 26) and Plaintiff's Motion to Strike Reply  
7 Memorandum (ECF No. 37)**

8 Based on the Court's ruling on Defendants' Motion to Dismiss, these  
9 motions are denied as moot.

10 **5. Plaintiff's oral motion for leave to amend second amended  
11 complaint.**

12 At the close of the oral argument, Plaintiff requested leave of  
13 court to amend her second amended complaint. Plaintiff requested  
14 additional time to amend that which defense counsel referred to as  
15 conclusory allegations. However, upon questioning by the Court,  
16 Plaintiff was unable to proffer any additional facts or theories of  
17 liability that would support the filing of what would be a third amended  
18 complaint.

19 Based on the Court's ruling above, granting Defendants Baker and  
20 Nielson's motion to dismiss, Plaintiff's motion for leave to amend her  
21 second amended complaint as to any claims against these specific  
22 defendants is respectfully denied. Accordingly,

23 **IT IS HEREBY ORDERED:**

24 1. Defendants Baker and Nielson's Motion to Dismiss, **ECF No. 16**,  
25 is **GRANTED**. Plaintiff's claims against Defendant Baker and Defendant  
26 Nielson are **DISMISSED with PREJUDICE**.

2. Plaintiff Coyle's Motion And Memorandum To Take Judicial Notice  
Of Facts, **ECF No. 23**, is **DENIED**.

3. Plaintiff Coyle's Motion To Strike Defendants' Motion To Dismiss (ECF No. 26), and Plaintiff Coyle's Motion To Strike Defendants' Reply (ECF No. 37), are DENIED as MOOT.

4. Plaintiff Coyle's Motion For Recusal, ECF No. 32, is DENIED.

5. Plaintiff's oral motion for leave to amend her second amended Complaint is **DENIED** as against Defendants Baker and Nielson.

IT IS SO ORDERED.

The District Court Executive is directed to file this Order, enter judgment dismissing the claims with prejudice against Defendant Baker and Defendant Nielson, and provide copies to Plaintiff and counsel.

DATED this 7th day of February, 2013.

*s/Lonny R. Suko*

LONNY R. SUKO  
UNITED STATES DISTRICT JUDGE